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Methodologies for Financing the Revitalization of an Historic Central Business District - Solving the Unreinforced Masonry Building Problem

Based on the
Experience of Paso Robles after the 2003
San Simeon Earthquake.

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Introduction:

Project Goals and Purposes.

This report is an effort to describe and analyze the planning, regulatory, and legal processes in which a smaller California city may use to redevelop the central business district (“CBD”) of that city in order to promptly accomplish the seismic retrofitting of older commercial and retail buildings within the CBD which would be unsafe in the event of an earthquake. In addition, it is hoped that this report can suggest ways for a city to assist in creating a more viable economic environment within the CBD so that the owners of the older buildings can more easily afford to retrofit and preserve these buildings rather than demolish them. In doing so, this report will focus on two particular, but common, problems applicable to small older California cities – the need to seismically retrofit older unreinforced masonry buildings (a “URM” building) and the need and desire to also renovate the public infrastructure of older central business districts in conjunction with retrofit efforts.¹

In describing these processes, this report will focus on two case studies in particular: 1. the recent experience of the City of Paso Robles in successfully mandating seismic retrofit work within its CBD in response to the 2003 San Simeon earthquake and, 2. the regulatory and redevelopment efforts undertaken by the City of Santa Barbara in the 1990s in their efforts to revitalize the retail core of their CBD along State Street and to financially assist those property owners who could not afford to undertake the seismic retrofit work which Santa Barbara had mandated.

Finally, it is desired that this report may suggest methodologies which other cities may consider and possibly adapt to their circumstances in order to promptly address the significant public safety concern of what can happen to their older unreinforced masonry buildings during an earthquake. Hopefully, this report may suggest a methodology which both adequately addresses public safety concerns in an expeditious way but which also allows a process for the preservation of those older and historic buildings which typically form the original and true 19th century character of a city. In

¹ An “unreinforced masonry building” (or “URM” building) is generally a building which was constructed of masonry load bearing walls and without the use of steel reinforcement in the walls. Often these buildings also were not properly attached to their foundations and the roof framing was not properly attached to the walls. It often also includes the use of exterior masonry parapets for architectural detail purposes where the masonry is not well attached to the structure. Most URM buildings were constructed prior to the 1946 edition of the Uniform Building Code which, for the first time, prohibited this type of construction in California.

addition, this report may suggest ways for a city to possibly assist property owners in the economic revitalization of the CBD which is typically necessary in order to support the economic conditions needed to finance a successful retrofit mandate.

Report Client

This report is being prepared for the Community Development Department and the chief building official for the City of Paso Robles to affirm their regulatory approach to seismic retrofitting and to suggest possible ways for Paso Robles to approach the next phase of their revitalization efforts. This report may also be reviewed by the local chamber of commerce and other members of the Paso Robles business community. It may be of particular interest to the property owners within the central business district of Paso Robles. One of the reasons this report is directed to the City of Paso Robles is because the suggested follow-up process involves the use of a public assessment district and the issuance of an assessment bond (as well as the potential use of redevelopment tax increment funds) and City supervised federal Community Development Block Grants (CDBG) in the next phases of the Paso Robles CBD revitalization efforts.

Statement of Objectives

Background.

Unfortunately, California has a long history of earthquakes and, as a result, its inhabitants have suffered tremendous losses of life and significant economic damage from such quakes. Of course, geology being what it is, this risk will not lessen in the future. In fact, according to the United States Geological Survey, California has a high risk of a major earthquake within the next 25 years. The potential risk of earthquakes certainly should provide an immediate incentive for each California community to take action and to try to become a safer place to live. Clearly, local municipal governments (cities and counties) must play an important role in the protection of its residents before, during, and after an earthquake. In fact, this project assumes that local municipal governments should take on the primary leadership role, both in mandating the retrofit safety work which is needed and in fostering the sort of economic climate that local businesses must have in order to finance this retrofit safety work. As the case studies described in this report demonstrate, a city can achieve these goals by utilizing appropriate governmental regulatory functions (such as

through the adoption of the necessary ordinances and regulations) and by forward-thinking economic development planning that includes creative public financing techniques.

The history of uniform construction codes in California is a history of stricter and safer code requirements over time. In fact, updated seismic and fire code mandates have typically been enacted in direct response to each major California earthquake especially with respect to public buildings. For example, after the San Francisco earthquake of 1906, the uniform building and fire code requirements changed drastically for the better. The same thing occurred for public schools, after the 1933 earthquake in Long Beach and the collapse of many elementary schools during that quake. All California hospitals must now be retrofitted to a certain very strict standard by the year 2013. This mandate is directly attributable to the Northridge earthquake of 1994 and the collapse of the Sylmar Veteran's Hospital which was caused by that quake. However, typically, for private buildings, these increased seismic safety standards only apply to new buildings or, in some cases, to remodels or additions of an existing building of a certain size or percentage of the original building.

Primary Objectives – Long Term Preventative Planning.

While the evolution of stricter uniform code requirements is a positive thing in the long run, it generally has not resulted in the widespread retrofitting of existing older buildings, especially those buildings located in the economically depressed areas of a city or county. In other words, as these older buildings become older and non-conforming as to safety and other code requirements, their age and non-conforming status often fosters a downward economic spiral in the business area where the dangerous buildings are located. In addition, most of these older areas represent the historic origins of a city and are, as a result, the core of a community's architectural heritage, often containing both designated and potential landmark buildings. The primary objective of this report is to suggest to local elected officials and to city planning and building safety officials that local building codes and safety mandates can be used effectively in conjunction with innovative infrastructure financing methods in on-going efforts to reduce the risk of structural damage before such damage occurs. In other words, , it is possible for a city to act before an earthquake forces action.

Further, by implementing these safety mandates before an earthquake or similar disaster happens, a city can also take concurrent steps to foster the financing of necessary public infrastructure improvement. Consequently, these improvements will make the economics of retrofitting a building

much more viable and achievable for the private property owner. This report will be submitted to the City of Paso Robles Community Development Department and to the staff of other central coast cities who are dealing with this problem on a day to day basis in the hope that they may find merit in some of these recommendations.

This report is also intended to affirm the efforts of the City of Paso Robles City Council, the Paso Robles Community Development staff, and the City's Chief Building Official for their tremendous efforts to enforce seismic safety requirements within their community. It is also a hope that this report will be seen as a validation the effectiveness of the Paso Robles enforcement and regulatory approach to seismic retrofitting in light of the San Simeon earthquake and demonstrate to other cities how it can work properly and effectively to prevent the loss of life and significant property damage. This report suggests possible techniques which other California cities may use to implement the next phase of these safety projects, such as through the use of a local CBD economic stimulus program while completing the retrofit of the few unsafe buildings which remain.

Review of Existing Models and Practices – Three Case Studies:

Case Study 1. Paso Robles - The 2003 San Simeon Earthquake.

On December 22nd, 2003, at 11:15 a.m., the city of Paso Robles was rocked by a major temblor and quickly experienced significant personal and property damage from the 6.5 magnitude earthquake. The earthquake was centered at a depth of about 5 miles just seven miles away from the small community of San Simeon, California. San Simeon is roughly 24 miles west northwest from Paso Robles. This was soon to be known as the "San Simeon Earthquake of 2003." (California Seismic Survey, 2004.)

Despite that the shaking at ground level lasted only four seconds, 40 buildings were significantly damaged within the older downtown blocks of Paso Robles. At least 47 people were injured in the Paso Robles – Templeton area. Tragically, two people were killed in the collapse of the historic 1894 Acorn Building in downtown Paso Robles as they attempted to exit the building during the earthquake. Four other commercial buildings were completely destroyed and the damage seemed to be concentrated in a small three block historic area of the downtown near Park St, Pine St, and between 12th and 13th Streets. Many residents were displaced from their homes and several private retail and office businesses were ultimately forced to relocate or close. Oddly, a hot sulfur spring

erupted shortly after the quake underneath the parking lot of City Hall and the public library. The hot sulfur spring formed a large sinkhole producing 1300 gallons per minute of hot water. This sinkhole remains uncorrected and a permanent solution has yet to be found. A second small hot spring also appeared in the embankment at Paso Robles Road and Highway 101. Damage also occurred to a number of water tanks, roads, bridges and wineries in the area. Altogether, within the areas of San Luis Obispo and Santa Barbara county where the earthquake was felt, approximately 290 homes and 190 commercial structures were damaged. (EERI, 2004)

In the aftermath of the San Simeon earthquake, one fundamental lesson was quickly and readily apparent – seismic retrofit improvements on unreinforced masonry buildings can significantly improve public safety. At the time of the San Simeon earthquake, downtown Paso Robles contained a total of 53 URM buildings of which 9 had been retrofitted at the time of the earthquake. Upon inspection after the earthquake, it appeared that none of the retrofitted buildings suffered major damage from the earthquake and all were apparently safe for enough for exiting purposes and continued occupancy. Alternatively, a large number of the un-retrofitted buildings were damaged, many so severely that they had to be demolished and the site cleared.

State Efforts to Mandate the Retrofit of URM Buildings.

Long term efforts to reduce and eventually eliminate the safety risk of URM buildings has had only mixed results at the state level. As stated, historically, the California state Legislature and the larger California cities have only been re-active to the problem – responding in the aftermath of each major earthquake and only improving their uniform construction code requirements in response to the specific types of damage or specific construction techniques which appear to be unsafe in retrospect. Yet, the danger from URM buildings has been apparent for some time and state-wide efforts to address this danger have not produced comprehensive results.

For the first time, in 1986, as part of the “California Earthquake Hazards Act” in the state Government Code, the state of California enacted legislation (Govt. Code sections 8875 – 8875.95 – copy attached as appendix A) which, among other things, required the local building safety officials for all cities and counties in “seismic zone 4” (an area defined in the state administrative code which is roughly the coastal areas of California south of San Francisco) to survey, identify, and catalog all of the “potentially hazardous buildings” (i.e., most often called “URM buildings”) within their jurisdictions. This law also required local building officials to develop a “mitigation program” to

notify the owners of the URM buildings of their unsafe status and to get these “potentially hazardous buildings” retrofitted as quickly as possible. But, the exact nature of this “mitigation program” (such as whether the retrofit is voluntary or mandatory) and the timing of these programs was left intentionally vague. Some cities acted quickly and affirmatively to identify all URM buildings within their jurisdictions and to require by ordinance that they be retrofitted on a certain time schedule. Unfortunately, due to the large number of URM buildings within California and due to the older nature of most of these buildings, compliance with the program, even in those cities where it was legally mandated, was very poor.

Ultimately, due to the political difficulties which a mandatory retrofit program causes local and state elected officials, the California state Legislature amended the Government Code. They added Section 8875.8 which permitted local retrofit “programs” which allowed the owner of an identified URM building to “comply” with a retrofit program by merely and simply attaching a 5 inch by 7 inch sign to the street exterior of the building stating in not less than 30 point type. The sign must read as follows: “This is an unreinforced masonry building. Unreinforced masonry buildings may be unsafe in the event of a major earthquake.” This remains the status of state law on URM retrofit requirements. As it stands now, any building owner who had not complied with the sign posting requirement as of December 31, 2004 was, instead, required to post a 8 inch by 10 inch sign with the same statement in not less than 50 point bold type font. Failure to post the warning signs could result in monetary penalties being imposed of up to one thousand dollars per violation. In short, even at this point, the state of California has no law which directly mandates the retrofit of private URM buildings when the building is not either a hospital or a public school building.

Case Study 1 (Continued) - The City of Paso Robles's Response to the San Simeon Earthquake – The Planning and Regulatory Approach to a URM Retrofit Program.

The Initial Reaction to the San Simeon Earthquake.

Clearly, Paso Robles faced new and unfamiliar challenges after the San Simeon Earthquake. This was the City's first big disaster in more than twenty years and first significant earthquake in more than 50 years. According to Ed Gallagher, the Housing Programs Manager for Paso Robles, historically, flooding from the Salinas River is a much more common emergency problem than the potential for earthquake damage in Paso Robles. Immediately after the quake, the City was faced with the displacement of numerous residents and businesses, the collapse of several downtown landmark buildings, a sinkhole in the City Hall/Public Library parking lot a damaged vehicular bridge, broken drinking water tanks, and, from an economic standpoint, an almost devastated downtown retailing community. Paso Robles wanted to return to normalcy and business as quickly as possible while acting immediately to ensure the safety of the community and to clean up the damage.

From a planning perspective, Paso Robles had just adopted a new General Plan (including a new Safety Element) just one week prior to the occurrence of the San Simeon earthquake. The purpose of the Paso Robles Safety Element is to establish goals, policies and action items to protect the community from risks associated with fires, flood, geologic hazards and other phenomena that put lives and property at risk. (Paso Robles General Plan, p. S-1, 2003) However, the Safety Element of the General Plan only briefly addressed the risk of earthquakes in the area. The major fault lines were listed, and a maximum potential size earthquake was described. However, no detailed information about the type of damage that would be anticipated if an earthquake did occur was listed in the policy document. The Safety Element did not address how such damage might be avoided or prevented. The Safety Element polices called for continuing efforts to educate the public on the risk of natural hazards and the development of a Disaster Response Plan. It also included general City policies for insuring structural safety and for minimizing exposure to hazardous areas and materials. As a result, the timing of the new General Plan and Safety Element adoption allowed Paso Robles to have these policies completely in place and ready for immediate implementation prior to the earthquake. In fact, the City had completed the public planning process by having all of these polices duly approved by the Planning Commission and City Council.

After the earthquake, these approvals allowed for quick action by the City Council in adopting aggressive retrofitting schedules and the adoption of updated, more strict building and uniform construction codes. At the same time, the experience of the earthquake demonstrated the fallacy and inadequacy of a voluntary retrofit program and the ineffectiveness of merely posting URM warning signs on the exterior of URM buildings as allowed by the state Government Code. (see appendix A.) Consequently, within months of the San Simeon quake, the City of Paso Robles adopted ordinances and implemented regulatory policies which required that all structures damaged in the earthquake beyond a specified threshold be immediately repaired and retrofitted using the current seismic codes. In addition, Paso Robles revised their Municipal Code and moved their existing deadline for the retrofit of existing URM buildings up by two years for high risk buildings in order to complete the seismic retrofit of all high risk URM buildings by the end of 2006. A copy of the Paso Robles Municipal Code Chapter 17.18 which establishes the retrofit mandate for existing URM buildings is attached as appendix B. (personal conversation with Robert Lata, Paso Robles Community Development Director, May 7th, 2004)

Paso Robles Municipal Code Chapter 17.18 established a requirement for all remaining unreinforced masonry buildings to be retrofitted by January 1, 2007. In addition, the Community Development Director felt the City should enforce the adopted deadlines for seismic retrofitting of all vulnerable structures and adopt the latest versions of the applicable building codes designed to address seismic hazards. Paso Robles adopted the latest version of the 2003 International Existing Building Code in July of 2004 (replacing the 1994 version) for all new construction. These up-to-date requirements were seen as the most effective means of preventing damage from future earthquakes. It is also important to note that a stronger earthquake, such as an 8+ magnitude earthquake on the San Andres fault, could raise major issues of safety for other vulnerable structures, such as for “soft story” apartment buildings and single family homes. Consequently, if a city only focuses on unreinforced masonry, older homes with no cross-bracing, or apartments with “soft” first stories (habitable space supported by columns above ground-level parking) may pose a large area vulnerable during the next major earthquake. Paso Robles also created a Local Hazard Mitigation Plan in accordance with the state Disaster Mitigation Act of 2000. The City also continues to provide public education, training, and awareness about the risk of earthquakes.

Paso Robles Seismic Safety Code – Municipal Code Update Timeline:

At a Paso Robles City Council meeting in March of 2004, the Council announced a public workshop to discuss a draft ordinance to amend the City's Seismic Safety Code. At that time, the Council indicated that owners of URM buildings, local architects, and structural engineers, and the general public would be invited to the workshop to give their comments on a draft retrofit ordinance. In addition, mailed notices of the public workshop was sent to all 39 owners of the previously identified URM buildings and to 29 area architectural and structural engineering firms. Additionally, press releases were made to the media weeks in advance of the public workshop. On April 29, 2004, the City Council held the first public workshop on the draft seismic retrofit ordinance and new compliance schedule. At the close of the workshop, the Council directed that the draft ordinance be prepared and that a public hearing and first reading of the ordinance be set for City Council consideration in May 2004. Eventually, the Paso Robles City Council adopted City Ordinance No. 878 NS on June 15, 2004 which established a mandatory process for the retrofit of all URM buildings within Paso Robles within the 30 month period following the adoption of the ordinance. Considering the complexity and political difficulty in structuring and mandating URM retrofit programs, the fact that Paso Robles was able to act definitively within six months of the San Simeon earthquake shows a great deal of dedication and political courage.

The Revised Provisions of the Paso Robles Seismic Safety Code:

The ordinance adopted by the Paso Robles City Council in June of 2004 contains the following requirements and mandates for all remaining URM buildings within Paso Robles:

- a. All building permits for the necessary retrofit work for URM buildings shall be obtained within one year of the date of the letter of notice from the City building official ordering the work to be done.
- b. Structural analyses and construction plans for the retrofit improvements for each URM building must be submitted to the City building official no later than 105 calendar days prior to the deadline for obtaining a building permit.
- c. The construction of retrofit improvements must be started and completed within 30 months of the date of the date of the letter of notice from the City building official.

d. Should a URM building owner fail to have engineering plans accepted by the City within one year of the date of the letter of notice from the City building official, the City Building Official will issue an order to have the building immediately vacated.

e. Should a URM building owner fail to complete construction of the seismic retrofit improvements within 30 months of the date of the letter of notice from the City Building Official, the City building official may issue an order to vacate the building.

d. City Staff was directed to prepare a written progress report to the City Council one year after the date of the letter notices to the URM building owners were sent out and again at 30 months from that same date.

Methods for Financing the Paso Robles URM Retrofit Ordinance:

Paso Robles had authorized the use of its federal Community Development Block Grant (CDBG) Funds as loans to owners of URM buildings in an effort to offset the costs of preparing structure analysis and retrofit plans even before the San Simeon earthquake occurred. These grants were never given directly to the URM building owners and were closely administered by the City. Retrofit studies and analyses were prepared under CDBG grant agreements in which the City paid the seismic consulting engineers directly. Between 1996 and 2001, a total of about \$126,000 in CDBG funds were used to provide to owners of 25 unreinforced masonry buildings to have seismic studies prepared. The average grant per building owner came to \$5,039.

During a meetings in March of 2004, the City Council again allocated \$101,000 in federal CDBG funds to a Seismic Mitigation Program, which provides funds for additional seismic study grants to URM building owners. In addition, as a result of the San Simeon earthquake, in March of 2004, the Federal Emergency Management Agency (FEMA) authorized the use of FEMA grant funds to assist Paso Robles in its recovery. A significant portion of this \$11.6 million in assistance consisted of federal Small Business Administration (SBA) loans to the owners of URM building which were damaged in the earthquake to repair their buildings. The repairs generally also involved the need to retrofit the building to prevent future damage. Because federal funds were used, building owners had to comply with several federal regulations before engineers and architects could be hired to prepare

the retrofitting plans. Following the mandatory steps, consulting firms were reimbursed for the costs of preparing the structure analysis and construction plans. Ultimately, building owners pay for the seismic retrofit of the building themselves. (FEMA press release, March 17, 2004)

Post-Quake Paso Robles - Timeline for URM Compliance:

The table below illustrates the time to implement the proposed revisions.

Date	Event	Time Elapsed
May 18, 2004	1 st Reading of Seismic Code Update Ordinance	
June 1, 2004	2nd Reading and adoption of ordinance	
July 1, 2004	Effective date of ordinance; date of service of order to URM building owners to retrofit their buildings	Day 0
March 15, 2005	Deadline to submit structural analysis and construction plans for retrofit improvements	105 days prior to 1 year deadline
July 1, 2005	Deadline for issuance of a building permit to construct retrofit improvements	1 Year
December 31, 2006	Deadline to complete retrofit work	30 months

Paso Robles - Current Conditions:

Currently, only eight (8) structures in Paso Robles which have been found to be unreinforced masonry structures remain in a non-retrofitted state. This was out of a total of thirty nine (39) URM buildings which were in place as of March 2004 after the earthquake. These remaining buildings have a high potential for damage if an earthquake occurred, especially an earthquake of a magnitude 5.0 or greater. Currently, Paso Robles is taking enforcement actions to bring about compliance. All of these buildings are located in downtown CBD of Paso Robles and some of them are potential historic structures or City landmarks. These buildings were all constructed in the late 19th and 20th century when un-reinforced masonry construction was common and allowed.

Remaining URM Building Inventory:

The chart below showcases all of the URM buildings within the City of Paso Robles as of November 16, 2007.

Property Owner	Building Address	Building Type	Main Use	# of Stories
City of Paso Robles	1240 Paso Robles Street	Public Facility	Public	1
Pioneer Auto Parts	1130 Pine Street	Retail	Commercial	1
G. Rauch Trust	841 21st Street	Retail	Commercial	1
Eugene & Wonja Keem	1405 Spring Street	Retail	Commercial	1
Kelly Gearhart	1518 Spring Street	Retail	Commercial	1
Joseph & Suzanne Ontiveros	608 12th Street	Retail	Commercial	1
City of Paso Robles	800 12th Street	Public Facility	Public	1
Francis Lojacono	608 13th Street	Retail	Commercial	1

As mentioned, the buildings within Paso Robles which had already been retrofitted prior to the earthquake were able to re-open within a few days or weeks after the earthquake, while many other damaged and unretrofitted buildings had to be demolished or closed for longer term repairs. For example, the owners of the Oddfellows Buildings and the Bethel Lutheran Church, which had been retrofitted prior to the earthquake, concluded that the retrofit work helped to avoid significant damage to their buildings and saved their historic old buildings. (See the “Findings and Recommendations from the San Simeon Earthquake” prepared by the California Seismic Safety Commission in May 5, 2004 – appendix C) After the quake, a Paso Robles building official felt that the best thing the City did (within its power) was to make building permit fees free for earthquake repairs. Permitting fees were waived for 6 months for commercial and 12 months for residential structures sustaining earthquake damage. The City also set up a field office across the street from City Hall to deal with only earthquake applications. This streamlined and accelerated the building process for earthquake repairs. It cost the City \$96,000 to operate that office and FEMA reimbursed the City for everything except the electric and telephone bills. This amounted to an \$87,000 reimbursement.

Case Study 2 - Financing Compliance in Difficult Times – the Santa Barbara Approach - Defining and Utilizing a Seismic Safety Assessment District:

A substantial challenge for a seismic retrofit mandate is how this work is financed. Most building owners lease their buildings to retail and other commercial tenants. Others are small “owner/occupant” businesses which depend on the operation of their business as the sole source of their income. Since it is often economically difficult or even infeasible for these tenants and businesses to temporarily relocate or shutdown in order to conduct the retrofit, many tenants and property owners resist such projects. Often, for these reasons, banks will not make the loans needed to fund the necessary retrofit work. This problem becomes particularly difficult in multi-tenant buildings. As a result, generally the best opportunity for seismic retrofit to occur is at the time buildings are sold or when their use or tenant changes and a window of opportunity opens to work on the building. (Berke, 1992, p.67). (See appendix D - letter from tenant.) Scott Wyner argues the critical “issue is finding a way to make it politically possible to do something about old buildings.” Ultimately, it is a question of the availability of funding – whether private or public. However, local governments almost never have the extra funds to grant or loan to a private property owner., Yet, most building owners need the extra incentive of a grant or low interest loan in order to retrofit and otherwise improve their URM buildings. Creative thinking is needed and creating a seismic safety assessment district such as the one used by the City of Santa Barbara could help solve this problem.

The 1989 Santa Barbara Seismic Retrofit Ordinance Program

Upon the initial enactment of state Government Code Sections 8875.1 - 8875.5 in 1986 (which mandated local URM retrofit “programs”), the City of Santa Barbara chose to move immediately to a mandatory (i.e., non-voluntary) retrofit program based on a reasonable approach using five (5) geographic “district-areas” and a schedule which required compliance over a period of years depending on the location of the building within the city. Fortunately, almost all of the URM buildings within Santa Barbara were located in its downtown CBD and many of the buildings were historic 19th century examples of early Santa Barbara architecture. Initially, Santa Barbara’s goal was to achieve full city-wide compliance within a period of five years after the adoption of the ordinance which occurred in August of 1989. [A copy of the City’s ordinance, codified as Chapter 22.18 is attached as appendix E.]

Santa Barbara's Chapter 22.16 (the "Seismic Safety Ordinance") defined "high risk buildings" and established a mapped area of the City (also known as the "District Compliance Schedule") which divided the city into five separate compliance areas with five compliance deadlines. Specifically, the CBD area was divided into the four separate districts with the balance of the City being in the fifth area which was scheduled last on the compliance schedule. Since the ordinance specifically exempted single family homes, duplexes and apartment buildings containing less than five units, the impact of the ordinance was primarily on the four areas of the older commercial CBD area of Santa Barbara. This "district" approach was believed to have the advantage of not disrupting the CBD with an area-wide construction all at the same time. It also had the advantage of phasing the use of seismic contractors and structural engineers out over a period of years. Also, prior to the adoption of the ordinance, the City Council had commissioned a "survey" to determine all of the URM buildings within the City. This survey allowed the City of Santa Barbara to adopt its ordinance with knowledge of the exact number of URM buildings and their locations. (Personal conversation with George Estrella, Chief Building Official of Santa Barbara, 2008)

With the adoption of the Santa Barbara ordinance in 1989, the owners of over 200 buildings in Santa Barbara were required to begin the retrofit process. Initially, the owners in the first district area were required to submit retrofit plans within 12 months of being notified by the City that their building had been identified as a URM building and to begin construction within 24 months of the notification, as shown by the issuance of a building permit. The second district area URM owners were required to submit retrofit plans within 24 months of the notification and to begin work within 36 months and so on through-out the 5 separate district areas of the City. Eventually all retrofit work was to be completed by 1995.

However, according to the Santa Barbara City Attorney's office, in 1991 and 1992, Santa Barbara began to realize that many of its URM building owners could not afford to comply and that they had extreme difficulty in obtaining the loans or other financing needed to undertake and pay for their retrofit work. This apparently related to a crisis in the savings and loan and banking industry dating from the late 1980s which caused many banks to stop making commercial loans, especially loans to small businesses and property owners. Even when such loans were made, they carried a high interest rate and a short repayment term, such as 5 – 8 years, making the annual payments extremely high and difficult for most business owners to afford. These owners approached the City and asked it to consider some sort of public financing project which could assist them in financing

their retrofit work. (personal conversation with Santa Barbara City Attorney, April 2008)

Ultimately, the City of Santa Barbara opted to create a public assessment district and issue assessment bonds to the building owners for private improvements. This method would raise a \$10 million dollar bond, which would be loaned to each of the non-complying owners who opted to voluntarily participate in the assessment. A detailed explanation of the creation of an assessment district is established below.

Creating a Public Assessment District in California: Special Benefit Assessments and Assessment Financing.

Assessment Districts and Proposition 218 Considerations

With the approval of Proposition 218 by the California voters in the November 5, 1996 election as an amendment to the state Constitution (Art. XIII C and XIII D), the procedures and minimum legal requirements for the establishment of assessment districts and for the substantive requirements for collecting assessments funds have changed significantly. Consequently, Proposition 218 tremendously impacts and limits a public entity's ability to finance public infrastructure improvements. It does this in three primary ways:

- Proposition 218 establishes new and more rigorous procedural requirements for adoption of special assessments, including a new mailed ballot process and a new majority protest requirements.
- Proposition 218 changes or modifies many of the standards used to determine the scope of the assessment and its legal propriety, including changing the burden of proof on the legality of the assessment away from the challenger (such as the plaintiff in a lawsuit) to the public agency imposing the assessment.
- Proposition 218 provides that assessments are now subject to repeal or reduction by initiative.

According to "Exaction and Impact Fees in California" (Solano Press, 2001 ed. page 165, Chapter Nine), prior to the passage of Proposition 218, the general procedure for the creation of special assessment districts and the imposition of special assessments only involved the following:

“[The] preparation of an engineer's report delineating the area subject to the assessment, the amount of the assessment, and the method of spreading the assessment; setting a

noticed protest hearing on the assessment and mailing notice of the proposed assessment hearing to all affected property owners; holding the hearing on the assessment for the purpose of determining whether there was a majority protest of the property owners (namely, have 50 percent of the property owners protested the assessment, affirmatively and in writing); and then imposing the assessment. In many circumstances, even with a majority protest, the legislative body could still impose the assessment with a four-fifths vote of its members.”

However, with the approval of Prop 218, the state Constitution now establishes that an assessment district may not be formed under any circumstances if there is a majority protest of the assessment payers.

The Formation of a Public Assessment District

Over twenty (20) state statutes authorize and provide mechanisms for cities and counties within California to levy and maintain special assessment districts for the purpose of financing the operation and maintenance cost of public infrastructure (i.e., capital) improvements. (See appendix F “Exactions and Impact Fees in California”) Typically, these assessment districts are used to fund such things as sewers, waste water treatment facilities, storm drains, street lighting, and public street landscaping. Unlike special districts, an assessment district is only a method of establishing a public revenue source within a designated geographic area. Annual payments are made by the property owner (i.e., the “assessment”) in order to finance a public improvement that “specially benefits” the property. So, an assessment district is not a separate legal or governmental entity distinct from the city or county or special district which forms it. The legal justification for creating an assessment district and collecting assessments is that the public capital improvement provides a unique and or “special” benefit to the assessed property over and above the benefits provided by general governmental services, such as the operation of streets and highways or the provision of public safety services. The typical steps in forming an assessment district are as follows:

- 1. Identify all properties subject to the possible assessment lien.** All of the properties, including properties owned by any governmental agency, which receive a special benefit, must be included in the proposed improvement district. According to state law, a special benefit is defined as “particular and distinct benefit” over and above the benefit received by the public at large. For example, when a local government constructs storm drains to solve an historical problem with flooding during the rain season, it is accomplishing a public

capital project of “special” benefit to that particular neighborhood. But, according to the law, the “general enhancement of property value” is not considered a “special benefit.”

2. Apportion the “special” benefit. An “assessment engineer” must independently determine the proportionate benefit derived by each parcel in the assessment district. The proportionate benefit is an individual parcel’s share of the cost of the improvement or maintenance to be financed by the district assessments. Such a report is generally only prepared and certified by a registered professional and licensed engineer. This apportionment of the special benefit must appear in the fundamental establishing document of an assessment district – the Assessment Engineer’s Report.

3. Mail notice of the proposed assessment. The city or county forming the assessment district must provide the required public notice of the possible formation of an assessment district and provide the opportunity to file a majority protest. Generally, this public notice must go to each property owner of each identified parcel not less than forty-five (45) days prior to the assessment hearing. Proposition 218 now specifies the content of the notice in detail. It must include: the amount of the annual assessment for the particular parcel, the total assessment amount, the duration of the assessment, the basis for the calculation of the assessment, and the reason or reasons for the assessment. The notice must also include the date, time, and place of the public hearing on the assessment. Most significantly, the notice must explain the procedures for the mailed ballot and the ability of the property owner to file a protest. Also, it must state the effect of a majority protest. i.e., Prop 218, now Cal. Const., art. XIII D SS 4(c), (d), and (e).

4. Mailed ballot protest. As mentioned, this is probably the single most significant change made by Proposition 218. Under the prior law, property owners had the right to protest the creation of a public improvement district. However, they each had to affirmatively file a protest and silence was presumed to be acquiescence in the assessment.

5. Determining majority protest. Only those ballots that are returned prior to the close of the hearing are counted. Of those ballots returned, if a majority of the ballots opposes the assessment (based on dollar value of the assessment), a majority protest exists and the assessment may not be imposed. In determining whether there is a majority protest, ballots

are tabulated according to the proportionate financial obligation of the properties, i.e., one “protest” for one dollar of assessment. More importantly, even with a majority protest, the protest could be “overridden” by a 4/5 majority vote of the city council or board of supervisors forming the district. Under Proposition 218, the notice must now include a ballot on which the property owner can indicate support of opposition to the assessment and the protest must be based only on the dollar value of the assessment – in this way the larger property owners tend to control the formation question.

6. Conducting the Public Hearing. Under Proposition 218, there is still a public hearing before the forming governmental entity; so, the mailed ballot process does not supplant or take the place of the public hearing. At the conclusion of the public hearing, the public entity must tabulate ballots to determine whether or not a majority protest exists and, if appropriate and if no protest exists, take any further action required to establish the assessment.

Typically, in a public assessment district, some property owners will be opposed to the creation or formation of an assessment district due to its costs and what they see as a lack of real or direct benefit to their properties and to them. Sometimes this is short-sighted because the public benefits can only be appreciated in the distant future. Most importantly, in attempt to form an assessment district, cities and counties take fully comprehend the ramifications of Proposition 218.

The Santa Barbara Seismic Safety Assessment District No. 1 of 1992

Santa Barbara provides an interesting and possibly useful example of an assessment district to assist property owners in financing URM seismic retrofit construction. As mentioned, Santa Barbara had reached a point in the early 1990s where compliance with its Seismic Safety Ordinance had stalled out. For the most part, while the remaining owners wanted to comply, they could not qualify for loans to finance the work nor could they independently afford to pay cash for the necessary URM work. Yet, they and their tenants wanted the work to be done and they wanted to comply.

In responding to their requests of assistance, the City decided that it would be inappropriate to assist these owners with public funds in the form of grants (such with Redevelopment tax increment funds) since the bulk of the City’s URM building owners had already complied with the ordinance at

their own private expense without any City assistance. Additionally, the City determined that it had no source of public funds available to make low interest loans or grants to these property owners. Then, the City learned of an approach first attempted by the City of Long Beach. The City of Long Beach created a voluntary assessment district to issue long-term (30 year) assessment bonds. (Attached as appendix G is a copy of the “official statement” of the Santa Barbara assessment district bond issue.) The unique thing about this assessment district is that being a part of it was strictly voluntary. In other words, the property owners who needed the URM financing could choose to participate in the assessment district. None of the property owners were or are forced to be in the district or to pay the assessments. Clearly, Assessment financing has several important advantages.

The most significant advantages of assessment financing are two-fold. Because the State of California allows the interest paid to the bondholders to be exempt from State income taxes, the interest rate on the bonds can be much lower than that of bank financing rates. Second, assessment bonds generally have long amortization schedules (repayment periods) of 25, 30 or even 35 years and thus allow repayment of the funds over a much longer period of time than that of typical bank commercial loan. Commercial bank loans often have a repayment period of 5 or 10 years. By having a longer repayment period, each annual loan payment (each annual assessment) can be significantly lower than the annual payment on a bank loan.

Also, this type of assessment district is easier to form and can be more flexible because it can be non-contiguous and participation voluntary. In other words, the property owners are not necessarily all adjacent to each other or in a certain designated area. This contrasts with a standard assessment district where all properties must be “similarly situated” and, as a result, all properties must be located in a distinct mapped geographic area so that the owners pay all or some portion of an assessment depending on a uniform “benefit allocation.” In the Santa Barbara assessment program, there is no “obligation” for property owners to pay into a seismic safety assessment district because the City will not force them to join the district. Also, the owners will know the amount they must pay (in total and each year) before they finally approve their participation in the district. Obviously, this voluntary approach would also make the Prop 218 concerns of a possible “majority protest” or that a legal challenge to the city or county very unlikely.

In the end, the City of Santa Barbara was able to raise \$10,794,799 in August of 1992 through the sale of “Santa Barbara Seismic Assessment Bonds” in the bond market. These funds were, in turn,

loaned to each of the 25 different property owners who wanted to be part of the assessment district. Their properties were annually assessed by the County Tax Assessor for a period of 30 years to make the interest and principal payments on the assessment bonds. No City funds were pledged in repayment of the bonds, and the City was under no financial or other obligation to make payments on the bonds. The sole source of repayment of the bonds were the assessments against the 25 participating properties. However, if a property owner failed to pay their assessment, since the assessment is collected by the County as part of the property tax bill, they risked a tax sale foreclosure on their property if they failed to pay.

Ultimately, this allowed Santa Barbara to complete the retrofit of all of the 200 plus URM buildings within Santa Barbara by the mid-1990s. At the very end, there were some 5 or 6 final hold-out property owners who had not complied as scheduled and as required. This forced the City to initiate a Superior Court lawsuit against the remaining owners for court injunctions ordering the remaining owners to comply with the mandate. Eventually, all of the remaining property owners complied with the court ordered work by 1998 and they did not actively resist the City lawsuit for an injunction. (personal conversation with Santa Barbara City Attorney, April 2008).

The City of Berkeley California has also faced similar URM problems and has introduced a series of creative techniques to retrofit URM buildings.

Case Study 3 – The City of Berkeley Seismic Mitigation Plan

The City of Berkeley has also been very successful in mandating the seismic retrofitting all of URM buildings within the city. Berkeley's program began in the late 1980s. Their approach has been similar to that of Santa Barbara's and Paso Robles's. The city of Berkeley created six different compliance categories of buildings and six different compliance schedules. The schedule began with Category I building occupancies in March 1997 and continued through March 2001 with Category VI building occupancies. With these compliance schedules and categories, Berkeley has developed and implemented one of the strictest municipal seismic safety ordinances in the State of California, if not the strictest. In addition, they have not hesitated to use their authority to adopt and enforce regulatory laws and penalties for those property owners who fail to comply or who have been untimely in complying. This includes the use of legal actions against non-complying property owners. (Berkeley City staff report, p. 8.)

Unlike many cities and counties, the City of Berkeley has also attempted to gain compliance from residential property owners with unsafe home foundations and chimneys. Because it has such a strict and broadly based program, the City of Berkeley has a comprehensive seismic mitigation plan that includes three fundamental aspects of support for the impacted property owners: 1. voluntary City grants; 2. direct grants to low-income property owners, and 3. rebates of 1/2 of the City's real property transfer tax back to the owner. All of these aspects help pay for the cost of the retrofit. These three mechanisms have allowed property owners to retrofit all affected commercial buildings and 95% of the residential buildings within Berkeley. On the municipal side with respect to City-owned and other publicly owned buildings, Berkeley and other public entities have accomplished a retrofit of every school and every major public building. Overall, the city of Berkeley has spent \$391 million dollars of public and private funds to accomplish their retrofit efforts. (A copy of a recent staff report from city of Berkeley on their seismic retrofit efforts is attached as appendix H.)

Creative Techniques for Financing Public Infrastructure within a CBD.

Most city planners and city leaders understand the significance and importance of having an economically vital central business district within their city. A well maintained public infrastructure is critically necessary for the continued economic strength of a city. This is especially important when a city's central business district is also the historic central core. A city's historic central core often represents the city's architectural heritage and history. However, during the past 30 years, California has experienced significant shifts in how it funds public infrastructure improvements. This shift includes the operation and maintenance expenses necessary for preserving historic infrastructure. In the past, local governments could look to general fund sources, including property taxes, sales taxes, transient occupancy taxes, and utility users taxes in order to fund the maintenance and repairs for public infrastructure. However, since Prop 13 in 1978, the authority of local governments to increase general fund revenues has been severely limited. This has continued right up until the present, particularly with such initiative measures as Proposition 218 (Cal. Const., art. XIII C-D) approved in 1996, which changed the voter approval requirements for all taxes, special assessments, and for certain types of property related fees and services. Moreover, the actions of the State Legislature, such as the imposition of the Educational Revenue Augmentation Fund and decreases in the Motor Vehicle License Fee in 1999, have further limited the ability of local governments to

identify and rely on stable public funding sources. (Beatty, et al, “Redevelopment in California”, Solano Press, 2004)

Public infrastructure within CBDs has suffered as a result of this. Yet, it is the economic vitality of a community’s CBD which can make or break a retail property owner’s ability to afford and finance seismic safety improvements. Unquestionably, there are some California cities where the CBD is only a shell of its former self economically and where, as a result, municipal URM seismic retrofit efforts have accomplished next to nothing, except possibly the posting of the state mandated warning placards. The Santa Barbara case study discussed below is a particular example of how a city avoided warning placards and illustrates how downtown revitalization can be successfully implemented.

The purpose of the Santa Barbara case study is to highlight how a city or county can implement street improvements and pedestrian amenities within the retail core of an historic downtown by using a creative financing technique; a public infrastructure improvement district. This technique, used in combination with public investment and private investment, can create the sort of economic climate that results in a full seismic retrofit of the historic downtown. This sort of approach can finance many things: such as sidewalk repairs, enhanced lighting, upgraded sidewalks and disabled access, better landscaping and holiday and other decorations. As these infrastructure and amenity improvements are implemented, the downtown community can be revitalized and improved seismically through private redevelopment efforts.

Case Study 4 – the Santa Barbara “Cadillac/Chevy” Model of Paying for Public Infrastructure Improvements; the State Street Sidewalk Improvement Project

In researching the Santa Barbara URM seismic safety program, a different and unique financing approach was apparent. Santa Barbara has recently been successful in combining the use of Redevelopment Project Area ² tax increment funding with that of an assessment district to create what they call the “Cadillac/Chevy” model of financing CBD improvements. Essentially, this is a process which identifies a “basic” public project which the Redevelopment Agency funds will pay for – the “Chevy” and then asks the impacted property owners if they would like to upgrade the project – the “Cadillac.” For example, in Santa Barbara, a need to remove and repair the downtown

² See Redevelopment in California by David F. Beatty et al (Solano Press, 3rd ed., 2004, pages 32-46)

sidewalks, street furniture, trees, and landscaping on the main commercial/retail/tourism street of Santa Barbara (the first 12 blocks of State Street) were identified in the early 2000s. The Santa Barbara Redevelopment Agency, through the issuance of tax increment (Tax Allocation) bonds had raised approximately \$5 million in bond proceeds to pay for this project. (Personal conversation with Brian Bosse, May 2008)

However, upon completing the design and permit review approval process for the State Street project, a need and desire to accomplish a “Cadillac” project was identified. Unfortunately, such an upgraded “Cadillac” project would exceed the funds available by about 20% of the total project cost. It was at this point that Santa Barbara hit upon the idea of asking the impacted property owners, the owners along an 8 block section of State Street, if they wanted to pay for the “upgraded” project by the formation of a public assessment district. This public assessment district would fund the 20% shortfall over a period of five years. As it turned out, distributing the cost of the 20% shortfall among the approximately 50 property owners resulted in fairly small annual assessment amounts which averaged to less than \$5,000 per property per year. Further, the City could afford to front the 20% funds necessary for the project so long as it was repaid by the annual assessments over a five (5) year time period along with an interest component. The interest was equivalent to the return the City typically receives on invested City reserve funds. (Personal conversation with Brian Bosse, May 2008)

The property owners also realized that they can, under the typical retail lease agreement, pass on the annual assessment to their tenant businesses. This is appropriate since it is these tenants who benefit most directly from the street improvements and upgrades. This made the assessment district more viable and ultimately successful for two reasons in particular: 1. it allowed the annual assessments (which were relatively small to begin with) to be distributed by the property owners among multiple tenants and to become correspondingly smaller and more manageable for all concerned ; 2. under Prop 218, the party with the right to vote on the assessment district (in the form of a majority protest vote) is the property owner and not the tenants. Ultimately, most of the impacted property owners realized the tremendous cost efficiencies in this “80/20%” approach and that it delivered significant upgrades to their properties and their commercial neighborhood that otherwise might not have been possible.

Consequently, this “Cadillac/Chevy” approach in the Santa Barbara CBD completed three separate assessment majority protest hearings without a majority protest. The project was broken up into three separate phases. Instead of having a basic redevelopment agency project of colored stamped concrete without enhanced street lighting, or street furniture, and without extensive landscaping, this “Cadilla/Chevy” approach delivered a State Street project with all of the following: 1. sidewalk paving using real brick pavers, 2. impressive sandstone planters, 3. fancy teak wood benches, 4. artistic sandstone water fountains on every block, 5. holiday lighting outlets, and 6. a substantial upgrade in the number of trees and in the ornamental landscaping used. Currently, these amenities appear to be working very well, especially when combined with a City program of allowing restaurants to install outdoor seating within the improved and wider sidewalks.

In my opinion, this sort of creative approach to improving and enhancing a city’s CBD is the sort of technique that it will take to allow other small and medium size California cities a way to provide economic vitality. More importantly, it usually takes strong economic vitality to support a business climate capable of financing the public safety work needed to retrofit the remaining URM buildings.

Conclusions and Recommendations

The fundamental lesson learned in this report is the need for a public/private partnership between property owners and civic leaders in order to successfully address the URM seismic safety issue. Apparently, this public safety problem will not be solved in a timely manner through strictly voluntary compliance efforts by property owners and it will not be solved solely by mandatory regulatory dictates imposed on property owners by cities and counties. Clearly, a community must take steps to create a strong economic climate which makes it economically worthwhile for a property owner to maintain and improve his or her building and to preserve the building in the eventuality of an earthquake. Paso Robles learned this very quickly after the San Simeon quake. The City took immediate steps to both mandate the retrofit work and to assist property owners in paying for the engineering and construction work which was needed. Less than five years after the San Simeon quake, Paso Robles has only eight remaining URM buildings.

Similarly, the City of Santa Barbara understood the need to step in as a city and provide a creative approach that would allow about 25 of its URM property owners to borrow the money needed for their URM work through the sale of assessment bonds. This was after conventional financing

methods and lenders proved to be unavailable or unwilling. In fact, this sort of lender crisis appears to be occurring in many California cities right now. Through its Redevelopment Agency and the use of Agency tax increment bond proceeds, the City of Santa Barbara saw an opportunity to combine Agency bond proceeds with a smaller targeted assessment district along State Street for the improvement of public infrastructure within Santa Barbara's CBD. Again, this sort of public and private investment in infrastructure has a positive spiral effect. Once the public benefit occurs, it encourages private investment which, in turn, encourages greater private investment, which, in turns, results in greater tax proceeds which may be re-invested into the community.

In the context of URM buildings, these public/private efforts are fostering a strong economic climate in a CBD. These partnerships are also critical in preserving the architectural history and heritage of a community. Without this sort of positive economic climate and these funding sources, the economic temptation to simply demolish (as opposed to retrofitting and preserving) an older building which needs seismic work is almost overwhelming. If this occurs, we will be in danger of losing the bulk of California's 19th century architectural and historical heritage.

Clearly, state seismic retrofit laws are inadequate in this area – with respect to privately owned buildings of a certain occupancy type and especially in assisting private property owners monetarily. The State has recognized the need to act in a regulatory fashion when it comes to schools and hospitals; however, in this area, it seems that the best it can do is to mandate small warning signs. This should not be acceptable. The States approach has apparently resulted in a large number of California cities which have seen an almost complete failure to adequately address their URM building problem. For example, according to recent media reports, the City of San Luis Obispo still has approximately 100 remaining URM buildings within its downtown core and has seen only a limited number of building retrofits completed in the last 20 years. San Luis Obispo apparently does not have a mandatory City retrofit ordinance and seems satisfied with the state law mandate that warning signs are an effective safety program. In short, the State of California, whether the Governor or the state Legislature, needs to take on more of a leadership role in this area and stop continuing to only react to each earthquake. In particular, the State needs to create some methods to help local cities and property owners to finance the seismic safety work which needs to be done. If this report were used by the City of San Luis Obispo, this report would recommend that they reconsider their approach and look into adopting a mandatory retrofit ordinance and program similar to that used in Paso Robles, Santa Barbara or Berkeley with a reasonable multi-year and multi-district

compliance schedule. If necessary, this report would also suggest that they look into the voluntary assessment district financing technique pioneered by Santa Barbara and the creative use of CDBG grant funds utilized by Paso Robles.

Finally, a recommendation to the City of Paso Robles: possibly Paso Robles should explore the feasibility of forming a small voluntary assessment district on the model pioneered by Santa Barbara for its remaining eight URM properties. Conceivably, Paso Robles, using this voluntary assessment district as a bond funding source, could explore issuing a small assessment bond for the total amount of the cost of the remaining retrofit work needed. Then, the City could, in turn, loan out the proceeds of this bond issue to each of the eight remaining property owners. The City would receive the semi-annual assessment payments from the property owners as part of their property tax payment and would use the annual assessments to pay the debt service on the bond. However, since this would be a small bond amount, the cost efficiencies would be limited and possibly difficult. Yet, I am advised that it may be possible for the City of Paso Robles to sell such a bond to a local bank or other lender which would be attracted to the tax exempt interest paid by the City and in the local security of owning such a bond. At least, the Santa Barbara City staff suggest that this is theoretically possible.

Lastly, this report suggests that many small California cities (but especially San Luis Obispo and Paso Robles) look into the innovative approach of what this report calls the “Cadillac/Chevy” model of paying for public amenities within their CBDs. In other words, these cities should examine whether their redevelopment projects or possibly federal CDBG funded projects could be supplemented or upgraded or expanded through the use of a smaller economically viable assessment district to upgrade and expand these public amenity projects – in the manner used by the city of Santa Barbara. This sort of approach to delivering attractive and upgraded public improvements within CBD is possibly the only sort of thing which will create the necessary positive economic upward spiral effect which fosters and allows private revitalization efforts to succeed and to create the sort of economic conditions which allow the preservation of older CBD buildings, many of which are our historical and architectural gems.

In conclusion, the time for both cities and property owners to act and to be creative is now. Now, before an earthquake devastates your community both from a human safety standpoint and from an

economic and historic preservation standpoint. It is important to learn for the lesson of such communities as Paso Robles, Santa Cruz, and Watsonville.

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